



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2021-0545]**

**RIN 1625-AA08**

### **Special Local Regulation; Great South Bay, Brightwaters, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation of certain navigable waters of Great South Bay, from Gilbert Park, Brightwaters, NY to Fire Island Lighthouse, NY for the Maggie Fischer Memorial Cross Bay Swim event. This action is necessary to provide the safety of life on these navigable waters during the swim event on Thursday, August 12, 2021. This rulemaking will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Long Island Sound or a designated representative.

**DATES:** This rule is effective from 8 a.m. through 12:30 p.m. on Thursday, August 12, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0545 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Chris Gibson, Waterways Management Division, U.S. Coast Guard; telephone 203-468-4565, email Chris.A.Gibson@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Long Island Sound
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. We must establish the temporary special local regulation by August 12, 2021 and insufficient time exists to execute the full NPRM process. Further, the expeditious implementation of this rule is in the public interest because it will help ensure the safety of those involved in the swim event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary special local regulation must be established on August 12, 2021 to ensure the safety of spectators and vessels during the swim event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Long Island Sound (COTP) has determined that potential hazards associated with the Maggie Fischer Memorial Cross Bay Swim marine event for any persons or vessels operating within certain waters of the Great South Bay, NY. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulated area during the Maggie Fischer Memorial Cross Bay Swim marine event.

### **IV. Discussion of the Rule**

The COTP is establishing a temporary special local regulation to restrict vessel traffic for the safety of persons and property. The special local regulation will cover certain navigable waters of Great South Bay, from Gilbert Park, Brightwaters, NY to Fire Island Lighthouse, NY, from 8:00 a.m. until 12:30 p.m. on August 12, 2021. The temporary special local regulation will cover Waters of the Great South Bay, NY, within 100 yards of the race course. Starting Point at the Fire Island Lighthouse Dock in position at 40°38'01" N, 073°13'07" W; then north-by-northwest to a point in position at 40°38'52" N, 073°13'09" W; then north-by-northwest to a point in position at 40°39'40" N, 073°13'30" W; then north-by-northwest to a point in position at 40°40'30" N, 073°14'00" W; and then north-by-northwest, finishing at Gilbert Park, Brightwaters, NY at position 40°42'25" N, 073°14'52" W (NAD 83).

The duration of the regulated area is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the Maggie Fischer Memorial Cross Bay Swim marine event. No vessel or person will be permitted to enter the regulated area without obtaining permission from COTP or the designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, and duration and time-of-day of the special local regulation. This rule involves a special local regulation lasting approximately 4.5 hours and impacting a limited area of the Great South Bay. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the special local regulation and the rule would allow vessels to seek permission to enter the area. Vessel traffic would also be able to request permission from the COTP or a designated representative to enter the regulated area.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary special local regulation lasting from 8 a.m. through 12:30 p.m. on August 12, 2021 that will limit access to the Great South Bay for the duration of the swim event. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION

CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 100**

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1

2. Add §100.T01-0545 to read as follows:

#### **§100.T01-0545 Special Local Regulation; Maggie Fischer Memorial Cross Bay Swim, Great South Bay, Brightwaters, NY.**

(a) *Regulated Area.* The regulations in this section apply to the following area: Waters of the Great South Bay, NY, within 100 yards of the race course. Starting Point at the Fire Island Lighthouse Dock in position at 40°38'01" N, 073°13'07" W; then north-by-northwest to a point in position at 40°38'52" N, 073°13'09" W; then north-by-northwest to a point in position at 40°39'40" N, 073°13'30" W; then north-by-northwest to a point in position at 40°40'30" N, 073°14'00" W; and then north-by-northwest, finishing at Gilbert Park, Brightwaters, NY at position 40°42'25" N, 073°14'52" W. These coordinates are approximate and are based on datum NAD 1983.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer

designated by or assisting the Captain of the Port Long Island Sound (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or the Designated Representative.

(2) To seek permission to enter, contact the COTP or the Designated Representative via VHF-FM marine channel 16 or by contacting the Coast Guard Sector Long Island Sound Command Center at (203) 468-4401. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the Designated Representative.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 12:30 p.m. on August 12, 2021.

Dated: August 9, 2021.

S. A. Koch

Commander, U.S. Coast Guard,

Acting Captain of the Port Long Island Sound.

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